

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

WILLIAM DAVID BURNSIDE,)	
)	
Plaintiff,)	
)	
v.)	No. 09-CV-2727-JDT-tmp
)	
T. WALTERS, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Before the court is the Motion to Dismiss filed by defendants YMCA of Memphis & the Mid-South ("YMCA") and Cynthia Magallon Puljic on January 9, 2015, as part of their answer to plaintiff William David Burnside's complaint. (ECF No. 70.) On February 5, 2015, Burnside requested an extension of time to respond to the motion to dismiss. (ECF No. 78.) The court granted that motion and allowed Burnside until March 13, 2015, to respond to the motion to dismiss. (ECF No. 79.) Burnside filed his response in opposition to the motion to dismiss on March 11, 2015. (ECF No. 87.)

The YMCA and Puljic filed a thirty-page answer to Burnside's complaint, listing seven defenses. Under the section titled "First Defense," they state the following:

The YMCA respectfully moves this Honorable Court to dismiss the plaintiff's cause of action.

Specifically, the plaintiff failed to commence this cause of action under Rule 3, 4 and 5 of the Federal Rules of Civil Procedure and, consequently, plaintiff's cause of action is time-barred. Additionally, the plaintiff failed to comply with the applicable statute of limitations under Tenn. Code Ann. § 28-3-104(a)(1) and § 105. Consequently, the plaintiff has failed to state a claim upon which relief may be granted under Rule 12 of the Federal Rules of Civil Procedure.

More specifically, the original Complaint was filed in this matter on November 6, 2009 along with an Application to Proceed in District Court Without Prepaying Fees or Costs. No summons was issued at the time of the filing neither of the Complaint nor within 120 days as required by Fed. R. Civ. P. 4 (m). The record in this matter was submitted by this Honorable Court on June 1, 2010, entitled Order Granting Leave to Proceed *In Forma Pauperis* Order of Dismissal Order Certifying Appeal Not Taken in Good Faith and Notice of Appellate Filing Fee. [DE 3]. Service to these defendants was not issued until October 3, 2014. [DE 40, 40-1]. Service was returned filed on October 21, 2014. [DE 41, 41-1].

(ECF No. 70, at 1-2.)

The court does not consider this "motion" to be properly filed. Local Rule 7.2(a)(1) requires that a party filing a motion in a civil case must include a supporting memorandum of facts and law. No such memorandum has been filed, and the court cannot decide the issues raised by the present "motion" without more substantial briefing. The defendants do not describe with any particularity their bases for asserting that the cause of action is time-barred or that the complaint fails to state a claim upon which relief may be granted. Moreover, regarding their challenge to the timing of the service of the summons and

complaint, the court did not authorize issuance of summonses until September 26, 2014. (ECF No. 37.) Therefore, it is recommended that the YMCA and Puljic's motion be denied without prejudice.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

August 5, 2015
Date

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.